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3 Independence, Oregon 97351
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5 **THE UNITED STATES DISTRICT COURT FOR THE**
6 **DISTRICT OF OREGON**

8 Timothy Barnes,

9 Plaintiff,

11 vs.

12 Routh Crabtree Olsen, PC,
13 John Thomas, Janaya Carter,
14 Shayda Zaepoor Le, Federal
15 National Mortgage
16 Association, Seterus, Inc.,
17 John & Jane Does 1 - 10

18 Defendants

) Case No.: 3:15-cv-1001-BR

) **FIRST AMENDED VERIFIED**
) **COMPLAINT FOR MONEY DAMAGES**
) **JURY TRIAL DEMAND**

19 **I. PRELIMINARY STATEMENT AND INTRODUCTION**

20 1. This first amended petition is an action for
21 statutory and actual relief brought by an individual
22 consumer Timothy Barnes ("Plaintiff") against Routh
23 Crabtree Olsen, PC, John Thomas, Janaya Carter, Shayda
24 Zaepoor Le, Federal National Mortgage Association,
25 Seterus, Inc., and John Does 1 - 10 (collectively
26 "Defendants") for violations of the Fair Debt
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1 Collection Practices Act 15 U.S.C. § 1692 *et seq.* (the
2 "FDCPA"); to obtain injunctive relief and for
3 declaratory relief. This petition is also an action
4 for statutory and actual relief under the Oregon
5 Unlawful Trade Practice Law ("OUTPL"), Or. Rev. Stat.
6 §§ 646.605 through 646.656, which are brought under the
7 Court's pendent and supplemental jurisdiction.
8
9 Plaintiff brings this action against the above named
10 Defendants both jointly and severally based on their
11 willful violations of said Acts.
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14 2. The FDCPA originally enacted by Congress became
15 effective on March 20, 1978, and was again amended and
16 broadened in 1986 and amended again in 1996. In
17 passing the FDCPA, Congress stated its purpose was "to
18 eliminate abusive debt collection practices by debt
19 collectors, to insure that those debt collectors who
20 refrain from using abusive debt collection practices
21 are not competitively disadvantaged, and to promote
22 consistent state action to protect consumers against
23 debt collection practices." To this end, the FDCPA
24 expressly prohibits debt collectors from engaging in
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1 numerous specific acts or practices and also by
2 mandate, requires debt collectors in attempting to
3 collect consumer debts for others to affirmatively
4 perform specific acts.
5

6 3. The FDCPA defines a "debt collector" to include any
7 person who uses any instrumentality of interstate
8 commerce, the mails in any business, the principle
9 purpose of which business is the collection of any
10 debt, directly or indirectly, owed, due, or asserted to
11 be owed or due to another. The FDCPA also defines a
12 "debt collector" to include any person who regularly
13 collects a debt owed to another.
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17 4. The FDCPA defines "debt" to mean any obligation or
18 alleged obligation of a consumer to pay money arising
19 out of a transaction in which the money, property,
20 insurance or services which are the subject of the
21 transaction are primarily for personal, family or
22 household purposes, whether or not such obligations
23 have been reduced to judgment. The obligation which
24 Plaintiff is alleged to owe is a "debt" within the
25 meaning of the FDCPA.
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1 5. The FDCPA defines "consumer" as any person obligated
2 or allegedly obligated to pay any debt.

3
4 6. The obligation to pay the debt does not affect
5 Defendants liability under the FDCPA. Whether or not
6 the Plaintiff owes the debt alleged to be due to any
7 creditor or alleged creditor is not a factor nor is it
8 material in this proceeding. Even if the Plaintiff
9 does owe an obligation, Defendants must comply in all
10 respects with the FDCPA. Therefore, the Plaintiff's
11 action is not concerned with whether the Plaintiff is
12 indebted to a creditor or alleged creditor, but whether
13 Defendants violated the FDCPA, *Baker v. G.C. Services*
14 *Corp.*, 677 F.2d 775, 777 (9th Cir. 1982). "Fair Debt
15 Collection Practices Act applied to lawyer regularly
16 engaged in consumer debt-collection litigation on
17 behalf of creditor client." Consumer Credit Protection
18 Act, 803(6), as amended, 15 U.S.C.A. 1692(6), *Heintz v*
19 *Jenkins*, 514 U.S. 291, 115 S. Ct. 1489 (1995).

24 **II. JURISDICTION/VENUE**

25
26 7. Jurisdiction of this Court arises under 15 U.S.C. §
27 1692k(d) and 28 U.S.C. §§ 1331 and 1337(a).
28

1 Declaratory relief is available pursuant to 28 U.S.C.
2 §§ 2201.1 and 2202. The doctrine of pendent and
3 supplemental jurisdiction for state law claims is
4 proper under 28 U.S.C. § 1367.
5

6 8. Venue is proper in this district as Defendants
7 transact business here, and the communications as well
8 as the conduct of Defendants upon which this complaint
9 is based occurred here.
10

11 **III. PARTIES**

12

13 9. The Plaintiff, Timothy Barnes, is a natural person,
14 and is at all times relevant hereto a resident and
15 citizen of the State of Oregon. The Plaintiff is a
16 "consumer" as that term is defined by 15 U.S.C. §
17 1692a(3), and within the scope of the OUTPL.
18

19 10. Defendant Routh Crabtree Olsen, PC is a professional
20 corporation duly registered under Oregon Secretary of
21 State engaged as "debt collectors" as defined by and
22 within the meaning of the FDCPA, 15 U.S.C. § 1692a(6),
23 and as a corporation defined within the scope of O.R.S.
24 § 646.639(h), engaged in the business of collecting
25 debts in this State where Defendants regularly collect
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1 or attempt to collect debts owed or due or asserted to
2 be owed or due another and whose principal purpose is
3 the collection of debts using the mails and telephone.
4 This Defendant may be served by serving the Officer in
5 Charge at its principal place of business located at
6 Routh Crabtree Olsen, PC, Stephen Routh, 511 SW 10th
7 Avenue, Suite 400, Portland, Oregon 97205 and its
8 statutory agent c/o CT Corporation System, 388 State
9 Street, Suite 420, Salem, Oregon 97301
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13 11. Defendant John Thomas is a person and a debt
14 collector, employed by Defendant Routh Crabtree Olsen,
15 PC whose principal purpose as a Defendant is the
16 collection of debts using the mails and telephone, and
17 this Defendant regularly attempts to collect debts
18 alleged to be due another. This Defendant is within
19 the scope of Or. Rev. Stat. § 646.639(h) and may be
20 served with service of process by serving John Thomas,
21 511 SW 10th Avenue, Suite 400, Portland, Oregon 97205
22
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24

25 12. Defendant Janaya Carter is a person and a debt
26 collector, employed by Defendant Routh Crabtree Olsen,
27 PC whose principal purpose as a Defendant is the
28

1 collection of debts using the mails and telephone, and
2 this Defendant regularly attempts to collect debts
3 alleged to be due another. This Defendant is within
4 the scope of the Or. Rev. Stat. § 646.639(h) and may be
5 served with service of process by serving Janaya
6 Carter, 511 SW 10th Avenue, Suite 400, Portland, Oregon
7 97205
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10 13. Defendant Shayda Zaepoor Le is a person and a debt
11 collector, employed by Defendant Routh Crabtree Olsen,
12 PC whose principal purpose as a Defendant is the
13 collection of debts using the mails and telephone, and
14 this Defendant regularly attempts to collect debts
15 alleged to be due another. This Defendant is within
16 the scope of Or. Rev. Stat. § 646.639(h) and may be
17 served with service of process by serving Shayda
18 Zaepoor Le, 511 SW 10th Avenue, Suite 400, Portland,
19 Oregon 97205
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23 14. Defendant Federal National Mortgage Association
24 ("FNMA") is engaged as a "debt collector" as defined by
25 and within the meaning of the FDCPA, 15 U.S.C. §
26 1692a(6), and as an entity defined within the scope of
27
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1 Or. Rev. Stat. § 646.639(h), engaged in the business of
2 collecting debts in this State where Defendants
3 regularly collect or attempt to collect debts owed or
4 due or asserted to be owed or due another and whose
5 principal purpose is the collection of debts using the
6 mails and telephone. FNMA does not have a duly
7 authorized statutory agent in Oregon. This entity may
8 be served with process by serving the Officer in Charge
9 at Federal National Mortgage Association, 3900
10 Wisconsin Avenue, N.W., Washington, D. C. 20016 and by
11 serving the Oregon Secretary of State, 255 Capital
12 Street NE, Suite 151, Salem, Oregon 97310.

13 15. Defendant Seterus, Inc. f/k/a IBM Lender Business
14 Process Services, Inc., ("Seterus" or "IBM" as stated
15 herein), a Delaware Corp., is doing business in Oregon
16 with minimum contacts in this forum. Seterus is an
17 alleged subservicer of FNMA and is engaged as a "debt
18 collector" as defined by and within the meaning of the
19 FDCPA, 15 U.S.C. § 1692a(6), and as a corporation
20 defined within the scope of Or. Rev. Stat. §
21 646.639(h). Seterus may be served with service of
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1 process by serving the Officer in Charge at Seterus,
2 Inc., Jeffrey A. Johnson, President, 3039 Cornwallis
3 Rd. Bldg. 203, Suite CC133, Research Triangle Park,
4 North Carolina 27709 and by serving its statutory agent
5 CT Corporation System, 388 State Street, Suite 420,
6 Salem, Oregon 97301.
7

8
9 16. Defendants John & Jane Does 1 - 10 are all natural
10 persons, corporations, parties, or an enterprise
11 employed by Defendants as debt collectors and are
12 involved in the instant matter. Said Defendants are
13 currently unknown to Plaintiff. Said Defendants and
14 entities will be joined as necessary parties upon
15 further discovery of their true nature and liability
16 once these facts are known and supported by competent
17 evidence.
18
19
20

21 **IV. CONDITIONS PRECEDENT**

22 17. Plaintiff avers that all conditions precedent have
23 been performed or have occurred under Fed. R. Civ.
24 Proc. 9(c) and FDCPA violations may now be asserted.
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V. STATEMENT OF FACTS

18. On the exact date of November 15, 2007, a federally related mortgage transaction was closed naming Chase Bank USA, N.A. as the payee. At the closing, Plaintiff consummated a toxic predatory mortgage loan (the "Transaction") with a principal sum of \$378,250.00 secured by a Deed of Trust covering real property described therein, then and now the Plaintiff's *principal dwelling*. Also at the closing, Plaintiff was provided with various disclosure documents relevant to federal law and the subject Transaction. Specifically, the Notices of Right to Cancel provided to the Plaintiff in connection with this Transaction discloses an inaccurate date that rescission rights terminate contrary to Reg. Z § 226.23(b)(1)(v).

19. The Transaction required Plaintiff to pay money arising out of a transaction in which money, property, or goods and services were the subject thereof and the same were primarily for personal, family and household purposes.

20. Accordingly, the *material* disclosure documents

1 provided to the Plaintiff in connection with this
2 Transaction violated the requirements of the Truth in
3 Lending Act, ("TILA"); and Regulation Z in the
4 following respects:
5

6 A. By failing to provide accurately the expiration
7 date rescission rights terminate in violation of
8 Reg. Z § 226.23(b)(5).
9

10 B. By failing to correctly provide all required
11 disclosures prior to consummation of the
12 transaction in violation of 15 U.S.C. § 1638(b)
13 and Reg. Z § 226.17(b),
14

15 C. By failing to make required rescission disclosures
16 'clearly and conspicuously' in writing in
17 violation of 15 U.S.C. § 1632(a) and Reg. Z §
18 226.17(a)(1).
19
20

21 21. On August 4, 2010 and within 3 years under 15 U.S.C.
22 § 1635(f), Plaintiff exercised and achieved rescission
23 by sending a *valid* written Rescission Notice to all
24 known interested Parties by U.S. Postal Service
25 certified mail, copies attached hereto and incorporated
26 as if fully stated herein by reference as Exhibit 1.
27
28

1 22. According to the unambiguous statutory mandate
2 provided by 15 U.S.C. § 1635(b), Reg. Z § 226.23(d), as
3 long as rescission of the Transaction timely occurred
4 and the notice is *valid*, (and it is), it extinguishes
5 any liability Plaintiff has to any creditor and
6 Defendants for finance or **other charges** arising from
7 the Transaction, "[t]he consumer **shall not be liable**
8 **for any amount**, including finance charges." Reg. Z §
9 226.23(d)(1). (emphasis)
10
11

12
13 23. Upon receipt of a *valid* rescission request, the
14 creditor, or any alleged assignee had twenty-days (20)
15 to refund or credit this account all monies paid and to
16 void the security interest, as required by 15 U.S.C. §
17 1635(b); Reg. Z § 226.23(d) or seek judicial guidance
18 under Reg. Z § 226.23(d)(4).
19
20

21 24. Thus Plaintiff stopped making payments as of
22 September, 2010 because of the statutory mandate under
23 TILA, Reg. Z, and because if he continued making
24 payments he would be equitably estopped from claiming
25 his rescission was valid resulting in a waiver.
26

27 25. Chase Bank USA, N.A. and Chase Home Finance, LLC
28

1 flippantly ignored the Plaintiff's *valid* rescission
2 notice and utterly failed to give effect to TILA
3 rescission provisions within 20-days receipt, failed to
4 accept a tender amount, and failed to seek judicial
5 guidance as required by Reg. Z § 226.23(d)(4).
6

7
8 26. According to the unambiguous statutory language and
9 plain meaning of rescission provisions, the performance
10 of Chase Bank USA, N.A. and Chase Home Finance, LLC is
11 a condition precedent to Plaintiff's obligation to
12 tender any further payments until such time as these
13 parties fully comply with the TILA's statutory mandate.
14

15 27. After Chase Bank USA, N.A. and Chase Home Finance,
16 LLC received Plaintiff's *valid* Rescission Notice,
17 Plaintiff received a letter from Chase dated September
18 13, 2010 describing a Servicer transfer to IBM, copy
19 attached hereto and incorporated fully herein by
20 reference as Exhibit 2.
21

22
23 28. Plaintiff received letters from IBM dated Oct, 11,
24 2010, Oct. 14, 2010, and Oct. 17, 2010 stating that IBM
25 has the right to collect payments, the transfer of
26 servicing and stating the subject Transaction is
27
28

1 currently in default, copy attached hereto and
2 incorporated herein as Exhibit 3.

3
4 29. Since Plaintiff was deemed to be in default, and FNMA
5 did not acquire the alleged debt until after the
6 default, then FNMA is a debt collector within the scope
7 of the FDCPA, and is not exempt under 15 U.S.C. §
8 1692a(6)(F)
9

10 30. Plaintiff then sent a dispute notice as that term is
11 defined under the FDCPA to IBM dated Oct. 23, 2010
12 informing IBM that Plaintiff had rescinded, describing
13 the grounds for Plaintiff's rescission, provided IBM
14 with enclosures of the certified mail receipts, and the
15 actual rescission notices sent to Chase Bank USA, N.A.
16 and Chase Home Finance, LLC describing the defective
17 *material* Notices of Right to Cancel, copy attached
18 hereto as Exhibit 4.
19
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21

22 31. Upon information and belief, Chase Bank USA, N.A.
23 allegedly assigns only the Deed of Trust according to a
24 Corporate Assignment on November 16, 2010 to Mortgage
25 Electronic Registration Systems, Inc. ("MERS") as
26 nominee for FNMA.
27
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1 32. Subsequent thereto, a letter dated January 21, 2011
2 from IBM was received in the mail by Plaintiff stating
3 an acknowledgment of Plaintiff's Oct. 23, 2010 dispute
4 letter, copy attached hereto as Exhibit 5. The IBM
5 letter, identifies FNMA as the owner of the Transaction
6 and states: "We have been engaged by Fannie Mae to
7 collect payments and respond to correspondence about
8 its loans." *** "We do not believe that rescission
9 would be appropriate for your loan." Thus, IBM has
10 effectively acknowledged that they have some business
11 relationship, and authority acting as an agent
12 responding for FNMA and the subject Transaction. Thus,
13 upon delivery of Plaintiff's dispute notice with its
14 rescission notice enclosure to IBM constituted delivery
15 of a rescission notice to FNMA.
16
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21 33. On February 4, 2011, Plaintiff filed suit against
22 Chase Bank USA, N.A., Chase Home Finance, LLC, IBM, and
23 later joined FNMA to enforce his substantive rights
24 under TILA, *see Timothy Barnes v. Chase Home Finance,*
25 *LLC, et al.,* Case No.: 13-35716.
26

27 34. During the course of that proceeding, FNMA did not
28

1 have a duly authorized statutory agent in Oregon, and
2 Plaintiff requested various licenses and contracts
3 between FNMA and IBM to substantiate their pleadings.
4 For example, Plaintiff requested documents, copy of
5 Plaintiff's Request for Production attached hereto and
6 incorporated herein as Exhibit 6, as follows:
7

- 8 A. Any and all licenses and/or registrations used by
9 DEFENDANT, as required by Law in order to lawfully
10 conduct its business in Oregon;
- 11 B. Any and all agreements and written contracts
12 between DEFENDANT, and FNMA related to this LOAN
13 transaction, regarding or pertaining to the
14 assignment, sale, or transfer of the Balloon Note
and Deed of Trust;
- 15 C. Please provide a complete audit trail of any
16 document(s), computer(s), or other data held by
17 you which indicate, address or discuss modifying
18 or amending any information regarding Plaintiff
reported by you;
- 19 D. Please produce all documents which constitute
20 consumer dispute verification (CDV's), Universal
21 Data correction forms, correspondence with any
22 consumer reporting agency, data deletion forms, or
other documents which request an alteration and/or
deletion of data you reported about Plaintiff;
- 23 E. Please produce your documents and/or
24 correspondence in your, or your attorney's,
25 possession[s] that refer to or relate to any
26 fact(s) which you believe may have any bearing
27 upon this lawsuit or any defenses you have raised
in this lawsuit, excluding letters between you and
28 your attorney.

1 F. All documents requested in PLAINTIFF'S Rescission
2 Notice; Notice Pursuant to RESPA (QWR); & Request
3 for Accounting.

4 G. Please produce all documents involving
5 communications between you and any of the
6 following persons, in which the communication in
7 any way referenced Plaintiff and/or any of his
8 personal identifiers and/or any of the LOAN
9 account numbers:

10 i. Equifax Credit Information Services, Inc.;

11 ii. Trans Union Corporation;

12 iii. Experian Information Solutions LLC;

13 iv. TRW, Inc., or any other entity with a name,
14 legal, trade or assumed, which includes "TRW"

15 v. Any other consumer reporting agency

16 35. None of these documents were ever produced, even
17 after Plaintiff sent the requisite notice that serves
18 as a prerequisite to a meet and confer conference and
19 pursuant to Fed R. Civ. Proc. 37(a)(2)(B), copy
20 attached hereto and incorporated herein as Exhibit 7.
21 The only logical reason for this omission is that the
22 documents do not exist, or the documents contradict
23 FNMA's and IBM's pleadings, and were intentionally
24 withheld from disclosure.
25

26 36. Thus, IBM (or Seterus) and FNMA are not authorized to
27
28

1 maintain private financial records related to Plaintiff
2 and this alleged Transaction, are not owners, or
3 holders of the obligation, and have no licensure to
4 operate a business collecting debts in Oregon. At
5 minimum, this Court may report these entities to the
6 Federal Trade Commission and Oregon Attorney General
7 for operating without proper licensure and
8 registration.
9
10

11 37. The brief discovery phase terminated with a myriad of
12 objections from those parties, and their refusal to
13 produce any documents supporting their defenses and
14 pleadings. However, one document provided to Plaintiff
15 during discovery, the Clay Brangham Declaration, page 6
16 of 6, disclosed an allonge whereby Chase Bank USA, N.A.
17 is assigning the Balloon Note to Chase Home Finance,
18 LLC.
19
20
21

22 38. After months of frustrating unresolved and improper
23 litigation and uncooperative discovery disclosure, and
24 communications with Chase Bank USA, N.A., Chase Home
25 Finance, LLC, IBM, and FNMA, Plaintiff filed a Rule
26 12(c) judgment and disclosed the subject allonge. FNMA
27
28

1 and IBM countered with their own dispositive motions
2 and attached the same Clay Brangham Declaration.
3
4 However, conspicuously absent from their pleadings and
5 this Clay Brangham Declaration was the allonge. The
6 district court rendered judgment in their favor on July
7 8, 2013.
8

9 39. Thereafter, Plaintiff timely filed notice of appeal,
10 appealed the judgment, and during the briefing,
11 Plaintiff again disclosed the allonge. However, FNMA,
12 and the Defendants herein this claim, briefed to the
13 Ninth Circuit Court of Appeals that "In fact,
14 Defendant-Appellees reviewed their records and could
15 find no reference to the "allonge" anywhere in any
16 declaration or in any of the documents Defendant-
17 Appellees produced to Barnes." Or to the federal court
18 for that matter.
19
20
21

22 40. While Plaintiff's TILA case is still pending on
23 appeal, Plaintiff received multiple letters from a
24 Seterus, Inc., dated February 18, 2014 claiming
25 \$514,527.61 is due and delinquent, another dated March
26 18, 2014 claiming FNMA is the owner, and another by
27
28

1 Lisa Donnelly, dated April 4, 2014, claiming legal
2 authority to foreclose on Plaintiff's property, copies
3 attached hereto and incorporated herein as Exhibit 8.
4

5 41. Plaintiff responded with dispute notices applicable
6 to all successors and assigns, dated February 18, 2014,
7 and April 25, 2014 requesting validation, cease and
8 desist, copies attached hereto and incorporated herein
9 as Exhibit 9, informing Seterus that based on previous
10 legal proceedings, and failure to produce contract
11 documents consistent with their pleadings, they did not
12 have authority to send legal notices, or take action to
13 foreclose Plaintiff's property rights.
14

15
16 42. Said communications, Exhibit 8, prove Seterus is
17 conspiring to foreclose Plaintiff's property and
18 accusing FNMA as coconspirator for the common purpose
19 of accruing an unlawful end or economic gain for
20 themselves at the expense and detriment of Plaintiff.
21

22
23 43. Without any Dunning notice under the FDCPA that
24 contains the consumer warning, FNMA, Defendants Routh
25 Crabtree Olsen, PC, and Janaya Carter initiated a
26 Foreclosure complaint, Monetary Award of \$375,380.80
27
28

1 Plus Interest, Costs and Fees Pursuant to Or. Rev.
2 Stat. 21.160(1)(c), copy attached hereto and
3 incorporated herein as Exhibit 10. Astonishingly, the
4 allonge that Defendants intentionally omitted in the
5 federal TILA case when they filed the Clay Brangham
6 Declaration suddenly appears in the foreclosure case.
7
8

9 44. This FNMA foreclosure complaint is contrary to the
10 notice requirements expressed in the deed of trust that
11 must occur prior to any legal action, and is unfair
12 because it is not permitted by the written agreement or
13 by federal or state due process law.
14

15 45. FNMA and their alleged counsel of record, alleged and
16 certified pleading a foreclosure claim at ¶ 19 that
17 states: "No other suit or action has been instituted,
18 or is now pending upon the Note or to foreclose the
19 Deed of Trust. Plaintiff has no adequate remedy at
20 law." The complaint, Exhibit 10, also alleged that
21 Plaintiff had failed to make monthly payments and that
22 the Note and Deed of Trust were in default.
23
24
25

26 46. These specific allegations in the foreclosure
27 complaint are patently false because another action is
28

1 pending regarding the enforceability of the alleged
2 debt. These allegations are also contrary to pending
3 federal TILA rescission requirements. Since the
4 allegations are false, the signature on the claim is
5 contrary to Oregon R. Civ. P. 17 C (1)-(4).
6

7
8 47. None of the communications during the course of this
9 foreclosure proceeding provided Plaintiff with a
10 validation notice.
11

12 48. During the course of the foreclosure proceeding,
13 Seterus files an affidavit, copy attached hereto and
14 incorporated herein as Exhibit 11, with false factual
15 statements and conclusions contrary to applicable
16 federal statutory and regulatory requirements
17 associated with Plaintiff's rescission of the
18 Transaction.
19

20
21 49. For example, the affiant claims the account is in
22 default since September 1, 2010, amounts are
23 immediately payable, plus pre- and post-judgment
24 interest, plus fees, that no other suit has been
25 instituted or is now pending upon the Note and Deed of
26 Trust, and a reasonable attorney fee. These statements
27
28

1 confirm that FNMA acquired the Transaction after an
2 alleged default and confirm possession of private
3 financial data without proper licensure and
4 registration with regulatory authorities that were not
5 disclosed in the federal TILA claim.
6

7
8 50. The Affiant Rebecca Graves, under penalty of law,
9 claims to be a Foreclosure Specialist of Seterus as
10 authorized subservicer for FNMA. This type of
11 statement, "authorized," is a charade, contrary to
12 these Defendants pleadings in the previous federal TILA
13 claim regarding authority subject to agency principles.
14 No contract, or evidentiary documents regarding this
15 authority was ever disclosed or produced in the
16 previous TILA claim when requested in discovery and in
17 support of FNMA and IBM's pleadings.
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21 51. Accordingly, Exhibit 10 and 11 prove all of these
22 Defendants are involved in some type of conspiracy for
23 the common purpose of accruing an unlawful end or
24 economic gain for themselves at the expense and
25 detriment of Plaintiff.
26

27 52. Moreover, according to TILA's statutory rescission
28

1 mandate, Plaintiff is not in default and is prohibited
2 and equitably estopped from assuming any position
3 contrary to his rescission. This type of double
4 standard imposed on Plaintiff is unfair, unethical,
5 oppressive, and abusive legal conduct.
6

7 53. Thus, the affidavit by Seterus, and utilized by FNMA,
8 and all Defendants contains a false impression of the
9 character, amount and legal status of the alleged debt.
10

11 54. The foreclosure action is a communication from all
12 Defendants and is a threat to take action that cannot
13 be legally taken until Plaintiff's federal TILA claim
14 is resolved on appeal.
15

16 55. The foreclosure action and documents filed therein by
17 Defendants is an unfair business practice that amounts
18 to harassment, piecemeal litigation, and induces
19 confusion as to authority of source and sponsorship of
20 servicing, ownership, and collecting an alleged debt.
21

22 56. All of the collection communications from Defendants
23 overshadow Plaintiff's rights, and amount to a threat
24 to communicate credit information, which is known, or
25 should be known to be false, including the failure to
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1 communicate to credit reporting agencies that a
2 disputed debt is disputed.

3
4 57. In the interim, Plaintiff filed a motion to dismiss
5 the state court foreclosure arguing that the court did
6 not have subject matter jurisdiction, another action
7 related to the alleged debt was still pending on
8 appeal, that FNMA was not a real party due to their
9 failure to properly attach the allonge affecting the
10 proper negotiation of the promissory note and "Holder"
11 status, and that Defendants failed to properly plead
12 facts to constitute a cause of action, copy attached
13 hereto and incorporated herein as Exhibit 12.

14
15
16
17 58. In Response thereto, these Defendants, change to the
18 next attorney Shayda Zaepoor Le, continue their
19 argument regarding an alleged default, and argue that
20 Plaintiff has failed to obtain proof of a TILA
21 disclosure violation, copy of their Response attached
22 hereto and incorporated herein as Exhibit 13. When, in
23 fact, these Defendants already stipulated and agreed on
24 appeal that Plaintiff had already proven that the
25 Notices of Right to Cancel were defective. Again,
26
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1 false statements and pleadings are a sham and are
2 unfair to the Plaintiff.

3
4 59. Plaintiff files a Reply to this Response pleading,
5 copy attached hereto and incorporated herein as Exhibit
6 14, and respectfully informs the state court of the
7 material defects, the lack of jurisdiction, the pending
8 action on appeal, lack of real party, false statements,
9 and improper negotiation of instruments regarding the
10 allonge.
11

12
13 60. Moreover, Defendants have a duty under the 15 U.S.C §
14 1692e and rules promulgated by the Federal Trade
15 Commission governing commerce, to comply with all
16 restrictions on reporting directly or indirectly any
17 disputed debts as disputed to all relevant parties.
18

19 61. Credit Reporting Agencies survey and pick up public
20 information in lawsuits for purposes of reporting
21 delinquent credit information and it accomplishes the
22 same result directly and indirectly when Defendants
23 fail to assert collection on disputed amounts giving a
24 false and misleading representation of the character,
25 amount and legal status of any debt.
26
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1 62. Defendants knew or should have known that the
2 original creditor/assignee failed to follow TILA
3 rescission procedures within 20-days receipt of a valid
4 request, failed to disclose the pending appeal, failed
5 to provide competent evidence of a nexus, failed to
6 produce a written contract that authorizes collection
7 from subservicers, interest, or any expenses, all
8 giving rise to unfair, deceptive, false, and misleading
9 representations.
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13 63. During the course of this foreclosure proceeding, and
14 after multiple hearings, the state court grants counsel
15 for FNMA tremendous latitude but verbally informs them
16 to appear in court within 30-days with evidence to
17 substantiate their claims.
18

19 64. John Thomas then files a Declaration, copy attached
20 hereto and incorporated herein as Exhibit 15, in
21 support of FNMA's supplemental record attaching the
22 Clay Brangham Declaration but omits the exhibits filed
23 in the federal TILA rescission case of Plaintiff, and
24 claiming "The original promissory note that is the
25 subject of this action is currently in my law firm's
26
27
28

1 office safe in Portland and I have personally viewed
2 it; ..."

3
4 65. Plaintiff alleges that the Declaration of John Thomas
5 is a device to subvert or avoid actual presentation to
6 the state court as instructed with evidence.

7
8 66. The next hearing occurs, and not one of these
9 Defendants arrives in person with any evidence
10 whatsoever as instructed by the state court and instead
11 phone in by audio conference.

12
13 67. Clearly these Defendants have no evidence and as a
14 result of this final hearing, the foreclosure claim is
15 dismissed.

16
17 68. Indeed, Defendants' intentional conduct, negligence,
18 omissions, misrepresentations and failure to abide by
19 all foregoing federal and state law has caused
20 substantial money damages, emotional and mental
21 damages, headaches, nausea, loss of weight,
22 embarrassment, insomnia, sick leave, as well as actual
23 damage to the Plaintiff proximately and within his
24 community.
25
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3 **VI. FIRST CLAIM**

4 **Violations Of The FDCPA**

5 69. Plaintiff repeats and re-alleges and incorporates by
6 reference paragraphs 1 - 68 above as if fully stated
7 herein.

8
9 70. Defendants attempted to collect a consumer debt
10 allegedly owed by Plaintiff and the obligation required
11 Plaintiff to pay money arising out of transactions for
12 personal, family, and household purposes.

13
14 71. The Defendants failed to communicate that a disputed
15 debt is disputed after multiple notices were sent to
16 the Defendants, disputing the alleged debt, a violation
17 of 15 U.S.C. § 1692e(8).

18
19 72. The Defendants used a false, deceptive and misleading
20 representation to collect an alleged debt which
21 violates 15 U.S.C. § 1692e(10).

22
23 73. The Defendants' were obligated by federal statute to
24 seek their remedy on appeal to the Ninth Circuit Court
25 of Appeals whereby Defendants violated 15 U.S.C. §
26 1692e(5) when they threatened and did take action in
27
28

1 bad faith that cannot be legally taken.

2 74. Defendants have attempted persistently to collect an
3 alleged debt that gives a false impression of the
4 character, amount, and legal status contrary to 15
5 U.S.C. § 1692e(2)(A).

6
7 75. Defendants have failed to produce a valid contract or
8 competent evidence that authorizes collection costs,
9 attorney fees, including interest in violation of 15
10 U.S.C. § 1692f(1).

11
12 76. Defendants have filed suit to collect an alleged debt
13 without legal authority and contrary to 15 U.S.C. §
14 1692f.

15
16 77. Defendants have litigated an alleged debt and engaged
17 in conduct that is oppressive and where the natural
18 conduct was to harass and abuse the Plaintiff's rights
19 pursuant to 15 U.S.C. § 1692d.

20
21 78. The Defendants continuing collection and
22 communication violated 15 U.S.C. § 1692g and §§ (b)
23 creating confusion of Plaintiff's rights and by failing
24 to fully provide requested verification of the debt.

25
26 79. The Defendants subsequent collection efforts violate
27
28

1 15 U.S.C. § 1692g(b) by failing to cease and desist
2 collection until the alleged debt was competently
3 verified.
4

5 80. The Defendants communication fails to contain the
6 mandatory validation notice and violate 15 U.S.C. §
7 1692g.
8

9 81. The Defendants communication fails to contain the
10 mandatory validation notice under 15 U.S.C. § 1692g,
11 thus it is contrary to 15 U.S.C. § 1692e(11).
12

13 82. The foregoing acts and omissions of these Defendants
14 were undertaken by them willfully, persistently,
15 intentionally, knowingly, discriminately as part of
16 their routine debt collection business and/or in gross
17 or reckless disregard of the rights of the Plaintiff.
18

19 83. As a result of the above violations of the FDCPA, the
20 Defendants are liable to the Plaintiff for declaratory
21 judgment that Defendants' conduct violated the FDCPA,
22 and Plaintiff's actual damages, statutory damages, and
23 costs and attorney's fees under 15 U.S.C. § 1692k,
24 Civil liability
25
26
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3 **VII. SECOND CLAIM:**

4 **Violations Under The Oregon Revised Statutes, §§ 646.605**
5 **through 646.656**

6 84. Plaintiff incorporates all the above foregoing
7 paragraphs 1 through 83 as if fully stated herein by
8 reference.
9

10 85. The Oregon Unlawful Trade Practice Law ("OUTPL")
11 provides that it is unlawful for any person to use any
12 unfair method of competition or any unfair or deceptive
13 act or practice in the conduct of trade or commerce
14 within this state including the employment of an
15 Unlawful Collection Practice under Or. Rev. Stat. §
16 646.639.
17
18

19 86. The instant matter is a consumer collection
20 transaction and Defendants' business service is within
21 the scope of the OUTPL. Defendants' conduct and its
22 transactional business generally and specifically,
23 affect trade or commerce in this state.
24
25

26 87. Defendants are not exempt under the OUTPL and nothing
27 stated within the scope of the Unlawful Collection
28

1 Practice under Or. Rev. Stat. § 646.639 makes them
2 exempt from liability.

3
4 88. The violations of the FDCPA described in the above
5 paragraphs was done knowingly or the willful commission
6 of an unfair or deceptive act or practice within the
7 scope of the Or. Rev. Stat. § 646.608(u).

8
9 89. Defendants violated Oregon law by engaging in the
10 business of collecting debts, or attempting to collect
11 an alleged debt from Plaintiff without a valid license
12 and proper registration under Or. Rev. Stat. § 697.015.

13
14 90. The communications including a foreclosure action,
15 the affidavits and declarations filed therein and in
16 support thereof amount to an attempt to enforce a right
17 or remedy with knowledge or reason to know that the
18 right or remedy does not exist, is contrary to Or. Rev.
19 Stat. § 646.639(k).

20
21
22 91. The communications including a foreclosure action,
23 the affidavits and declarations filed therein and in
24 support thereof amount to a representation that the
25 alleged debt may be increased by the addition of fees
26 and charges when such fees and charges may not legally
27
28

1 be added under TILA rescission provisions is contrary
2 to Or. Rev. Stat. § 646.639(m).

3
4 92. The communications including a foreclosure action,
5 the affidavits and declarations filed therein and in
6 support thereof amount to a collection of interest and
7 other charges in excess of the alleged debt that are
8 not expressly allowed by federal law and contrary to
9 Or. Rev. Stat. § 646.639(n).

10
11 93. The conduct described in the above paragraphs causes
12 injury, disparages Plaintiff's property value and is
13 misleading under Or. Rev. Stat. § 646.608(h), is false
14 representation concerning the nature of the transaction
15 under Or. Rev. Stat. § 646.608(k), is unfair and
16 deceptive trade under Or. Rev. Stat. § 646.608(u), is
17 oppressive, substantively unconscionable, and contrary
18 to public policy and generally recognized standards
19 applicable to the consumer credit protection practices
20 and the OUTPL.

21
22 94. Defendants' conduct has failed to abide by the
23 Federal Trade Commission rules, and failed to abide by
24 the FDCPA. Said conduct and material violations are
25
26
27
28

1 unethical, cause piecemeal litigation and harassment,
2 oppressive or unscrupulous and has in fact caused
3 substantial injury to the Plaintiff. Said conduct is
4 unfair and deceptive within the meaning of the OUTPL.
5

6 95. The violations of the OUTPL described herein above
7 cause or induce actual confusion or actual
8 misunderstanding as to the source, sponsorship,
9 approval, or certification of goods or services.
10

11 96. Plaintiff is entitled to statutory and actual relief
12 for said violations, and a reasonable attorney fee.
13

14 **VIII. THIRD CLAIM**

15 **Declaratory And Injunctive Relief**

16
17 97. Plaintiff repeats, re-alleges and incorporates by
18 reference each paragraph 1- 96 above as if more fully
19 stated herein.
20

21 98. There exists a dispute over whether Defendants have
22 violated the FDCPA, and the OUTPL that must be
23 determined judicially.
24

25 99. The unlawful, unfair and business acts and practices
26 of Defendants described herein present a continuing
27 threat to members of the general public in that
28

1 Defendants and the Doe Defendants are currently
2 engaging in such acts and practices, and will persist
3 and continue to do so unless and until an injunction is
4 issued by this Court.
5

6 100. Pursuant to OUTPL, Plaintiff seeks an order enjoining
7 Defendants from engaging in the acts and practices as
8 hereinabove alleged
9

10 101. Plaintiff is entitled to injunctive relief, a
11 declaratory judgment and a determination that
12 Defendants violated the FDCPA, the OUTPL, and Plaintiff
13 is similarly entitled to an order enjoining said acts.
14

15 102. As a result of Defendants actions, omissions, and
16 violations, Plaintiff is entitled to statutory damages,
17 actual damages, punitive damages, reasonable attorney
18 fees, and all costs to include time lost at work and
19 litigating this matter.
20
21

22 103. Defendant's actions, omissions, and violations as
23 alleged herein constituted the negligent, bad faith,
24 and intentional infliction of mental and emotional
25 distress upon the Plaintiff, proximately causing
26 Plaintiff to suffer monetary damage, great mental
27
28

1 distress, mental and physical pain, embarrassment,
2 humiliation and will in the future continue to suffer
3 the same.
4

5 **IX. FOURTH CLAIM**

6 **Civil Conspiracy**

7
8 104. Plaintiff repeats, re-alleges and incorporates by
9 reference each paragraph 1- 103 above as if more fully
10 stated herein.

11
12 105. In the course of this Transaction, the improper
13 negotiation with an allonge that is NOT so permanently
14 affixed as to become a part thereof whereby it is fatal
15 to a "Holder" status that was undisclosed and
16 intentionally withheld from filing in a prior federal
17 judicial proceeding now on appeal, the unlawful
18 collection thereof, and on the dated intervals herein,
19 collectively all Defendants persistently and
20 intentionally acted with reckless indifference,
21 malicious ill will, tortious character to induce such
22 confusion upon Plaintiff as to source and sponsorship
23 of mortgage loan ownership and services, and as to the
24 collection of an alleged debt.
25
26
27
28

1 106. Defendants all at the direction of FNMA, Routh
2 Crabtree Olsen, PC, its Defendant employees: John
3 Thomas, Janaya Carter, Shayda Zaepoor Le, Seterus, Inc.
4 acted in concert with actual knowledge and agreed with
5 each other via joint venture or individual conspiracy
6 for the common purpose of accruing an unlawful end or
7 economic gain for themselves at the expense and
8 detriment of Plaintiff.
9

10 107. Plaintiff was in fact injured as a direct and
11 proximate result of these intentional unlawful acts and
12 omissions, including *inter alia*, breach of trust, acts
13 of intentional suppression of *material* facts, multiple
14 *material* failures to disclose necessary parties, and
15 filing false unsubstantiated documents in the public
16 record, false notices, and invalid claims to foreclose
17 on void instruments.
18

19 108. As a result, Plaintiff is entitled to statutory,
20 actual, compensatory, and punitive damage to be proven
21 at trial against Defendants, and whereby this clam
22 should be allowed against any equitable claim of
23 Defendants.
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3 **X. JURY TRIAL DEMAND**

4 109. Pursuant to the seventh amendment to the Constitution
5 of the United States of America, Plaintiff is entitled
6 to, and hereby demands, a trial by jury.
7
8
9

10 **XI. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully prays that judgment be
12 entered against Defendants by this Court for the following:
13

- 14 1. Enter injunctive and corresponding declaratory relief
15 establishing the foregoing conduct of Defendants to be
16 unlawful, enjoining Defendants from continuing to engage
17 in said conduct, and granting such additional equitable
18 relief as may be appropriate;
19
20 2. Award Plaintiff actual damages;
21
22 3. Award Plaintiff punitive damages;
23
24 4. Award Plaintiff state and federal statutory damages;
25
26 5. Award Plaintiff compensatory damages for mental and
27 emotional distress, humiliation and embarrassment to be
28 determined at trial;

- 1 6. Award Plaintiff reasonable attorney's fees;
- 2 7. Award Plaintiff his costs including time lost at work
- 3 and litigating this matter;
- 4
- 5 8. Grant such other and further relief as it deems just
- 6 and proper.
- 7
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4 **VERIFICATION**

5 I, Timothy Barnes hereby certify that the facts contained
6 in the foregoing First Amended Verified Complaint For Money
7 damages are true and correct to the best of my knowledge,
8 information and belief.
9

10
11 Dated: July 7, 2015

Respectfully submitted,

12 
13

14 Timothy Barnes
15 590 South Greenwood Rd.
16 Independence, Oregon 97351
17 503-585-9517
18 tim@westsidelandscape.com
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this First Amended Verified Complaint For Money Damages, Jury Trial Demand has been filed with the clerk of the United States District Court for the District of Oregon and pursuant to Oregon Unfair Trade Practices Law to the authority as follows:

Oregon Department of Justice
Ellen F. Rosenblum, Attorney General
1162 Court Street NE
Salem, Oregon 97301-4096

By my signature below, I understand a) this complaint will become part of DOJ's permanent records and is subject to Oregon's Public Records Law; b) this complaint may be released to the business or person about whom I am complaining; c) this complaint may be referred to another governmental agency. By my signature below I authorize any party to release to the DOJ any information and documentation relative to this complaint.

July 7, 2015



Timothy Barnes
590 South Greenwood Rd.
Independence, Oregon 97351
503-585-9517
tim@westsidelandscape.com